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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ARB CORPORATION LIMITED, a
foreign corporation

Plaintiff,

v.

OVERLAND VEHICLE SYSTEMS,
LLC, a Delaware limited liability company,

Defendant.

No.

**COMPLAINT FOR TRADE DRESS
INFRINGEMENT**

DEMAND FOR JURY TRIAL

ARB Corporation Limited (“Plaintiff” or “ARB”) files this Complaint against defendant Overland Vehicle Systems, LLC (“Defendant” or “Overland”), alleging as follows:

I. NATURE OF THE ACTION

1. This is an action for federal trade dress infringement and related state and common law claims in connection with Defendant’s infringement of ARB’s trade dress rights related to the advertising and sale of Defendant’s EGOI Permanent On Board Dual Motor Air Compressor System.

2. ARB seeks injunctive and monetary relief.

II. THE PARTIES

3. Plaintiff ARB Corporation Limited is a corporation organized and existing under the laws of Australia, with its principal place of business located at 42-44 Garden Street, Kilsyth, VIC 3137, Australia.

4. Defendant Overland Vehicle Systems, LLC is a limited liability company organized and existing under the laws of Delaware, with its principal place of business located at 9830 Norwalk Blvd., Unit 130, Santa Fe Springs, CA 90670. Overland designs, manufactures, and sells gear and accessories for off-road vehicles.

III. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 15 U.S.C. § 1125 and 28 U.S.C. § 1331 because this action arises under the federal Lanham Act. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the claims arising under Oregon state law because those claims are substantially related to the claims over which this Court has original jurisdiction and are part of the same case and controversy.

6. This Court has personal jurisdiction over Overland because Overland conducts business within the State of Oregon and the causes of action asserted in this Complaint arise out of Overland's infringing acts within the State of Oregon.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because a substantial part of the events giving rise to ARB's claims have occurred in this judicial district.

8. Upon information and belief, Overland has committed acts of infringement in this district by promoting, selling, and offering to sell products that infringe on ARB's trade dress rights within this judicial district.

IV. FACTS AND BACKGROUND

A. ARB's Protected Trade Dress

9. ARB is a market leader in innovative products for off-road vehicles. Founded in 1975 in Australia, ARB got its start designing and manufacturing equipment for vehicles traversing the Australian outback. ARB is highly regarded for its innovative, high-quality roof racks, storage equipment, vehicle camping and overland equipment, vehicle suspensions and auxiliary exterior accessories, recovery equipment, and more.

10. Among ARB's flagship families of products are air compressors, which are a vital part of off-roading. Off-road vehicles are used to traverse a variety of terrains. Depending on the terrain, it may be preferable to have different amounts of air pressure in an off-road vehicle's tires. For example, when driving through mud, it may be preferable to have low air pressure, to increase the surface area of the tire that makes contact with the ground, which in turn creates better traction. For driving over gravel or concrete, higher air pressure increases fuel efficiency and wear on the tires, while still allowing for sufficient ground contact and traction.

11. Air compressors are used to inflate tires to their optimal pressure. Off-road enthusiasts frequently install air compressors under the hoods of their vehicles, which traditionally connect to the vehicle electrical systems, allowing users to inflate their tires automatically to optimal pressure for the applicable terrain.

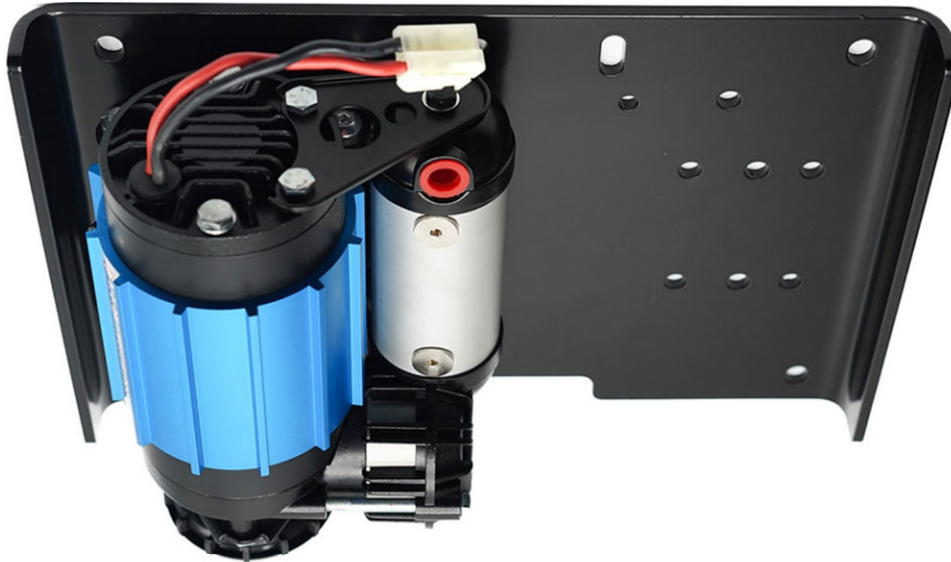
12. ARB has manufactured air compressors since about 2007. Historically, ARB made single-motor air compressors, using unique design elements. For example, the image below is of ARB's Single Motor Onboard 12V Air Compressor, model CKMA12:



13. This product, launched in about 2007, includes a number of unique, ornamental and eye-catching design elements, as seen above. Specifically, the motor has a heat sink with radial fins wrapped circumferentially around the motor. There are two black bolts positioned on the lower portion of the heat sink. The heat sink has a brushed metal texture with a bright color that provides substantial contrast to the dominant color, which is black. The heat sink is only a portion of the length of the motor cylinder, leaving the appearance of black collars on either side of the heat sink.

14. The end of the compressor (at right) has a circular cap with a unique design. In particular, the cap is round with an internal, circular groove that leaves a large, round, planar surface that provides room for ARB's brand name. The cap also has rounded edges, and 14 flanges arranged around its outer perimeter.

15. The rear of the product has additional, unique design elements.



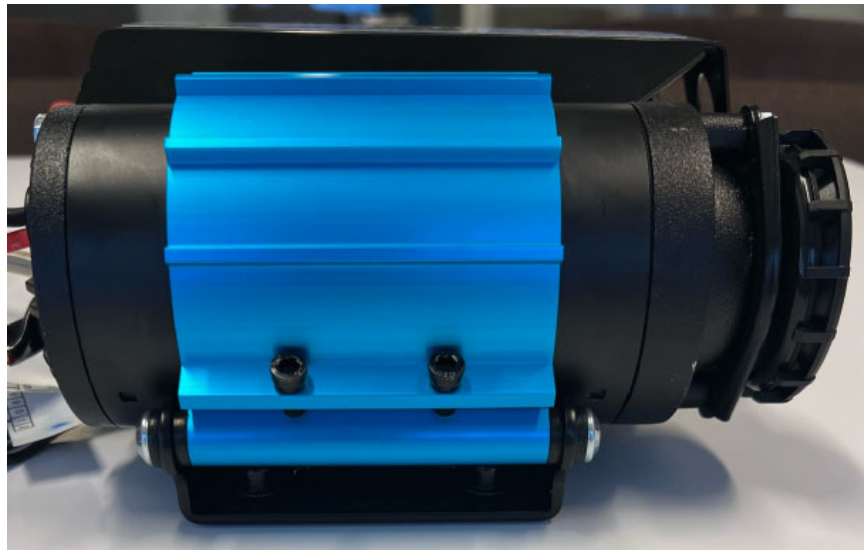
16. As shown above, the rear of the product has a heat sink with a unique design and four metallic bolts arranged, in the orientation shown, at approximately 12:00, 1:30, 4:30, and 6:00, with connection wires attaching at approximately 7:30.

17. In about 2011, ARB launched a new air compressor product—a twin air compressor characterized by two motors on either side of a center section, as shown below (the “ARB Twin Motor Compressor”):



18. ARB has, since 2011, continuously used similar ornamental design elements, maintaining continuity of its trade dress through its compressor lines.

19. Specifically, each motor has a heat sink with radial fins wrapped circumferentially around the motor. There are two black bolts positioned on the lower portion of each heat sink. The heat sinks have a decorative brushed metal texture with a bright color that provides substantial contrast to the dominant color, which is black. The heat sinks are only a portion of the length of their respective motor cylinders, leaving the appearance of black collars on either side of the heat sinks.



20. For the portions of the motor cylinder, visible to the immediate left and right of the heat sink, ARB chose to utilize a smooth, brushed metal texture finished in gloss black—a nonfunctional design choice that emphasizes ARB’s attention to detail.

21. The ends of each motor cylinder consist of finely textured metal finished in a gloss black, creating contrast between the ends of each motor and the remainder of its brushed metal body. The compression components extend out away from the cylinder at a 90 degree angle, and are topped with a cylinder head also finished in gloss black. Together, these design choices add continuity to the product’s appearance.

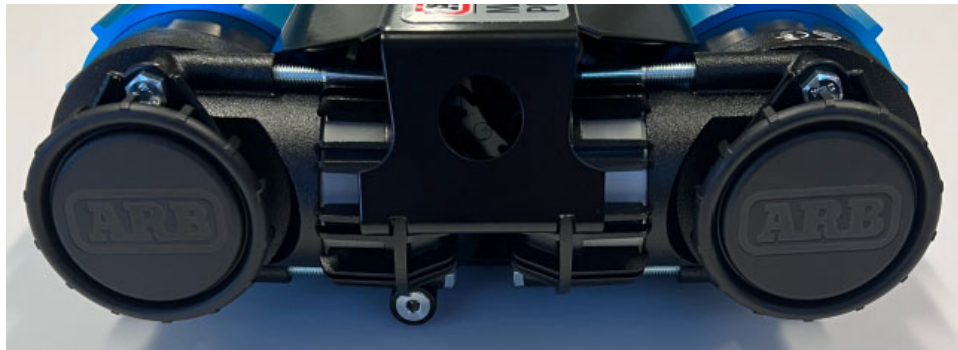


22. The cylinder head includes unique radial fins.



23. ARB chose to keep the long bolts extending perpendicular to each motor cylinder exposed, displaying its metallic finish. This design choice creates ornamental contrast between the hardware and the product's other largely black and blue components.

24. The end of the compressor has the same, unique, circular caps, with an internal, circular groove that leaves a large, round, planar surface that provides room for ARB's brand name. Despite nearly endless options for texture, color, shapes, and other ornamental features, ARB chose to go with caps that have rounded edges, with 14 flanges arranged around their outer perimeters, and that are black with a smooth finish.



25. The rear of the product has two heat sinks with a unique ornamental design. Specifically, each heat sink has 8 flanges, arranged progressively from closed, to open, to closed, and that intersect an interior circle.



26. Again, with a focus on contrast, ARB chose to leave the four metallic bolts connecting the left heat sink to the rear of the product and shown at approximately 12:00, 1:30, 4:30, and 6:00 as bare metal, with connection wires attaching at approximately 7:30. The four metallic bolts connecting the right heat sink to the rear of the product are placed in a similar pattern and are also exposed metallic. These design elements create a clean, orderly aesthetic that continues the trend found throughout the product's design.

27. The rear of the product contains a metal cover plate finished in smooth gloss black, in contrast to the surrounding textured metal. The cover plate contains a circular opening and a metal grill attached by four metallic screws. Like the hardware throughout the product, the screws are left in their bare metal form, creating contrast between them and the powder coated components. The screws are positioned at approximately 1:30, 4:30, 7:30, and 10:30. The metal

grill uses multiple rings and two intersecting pieces shaped at approximately 90 degrees and mirroring one another.

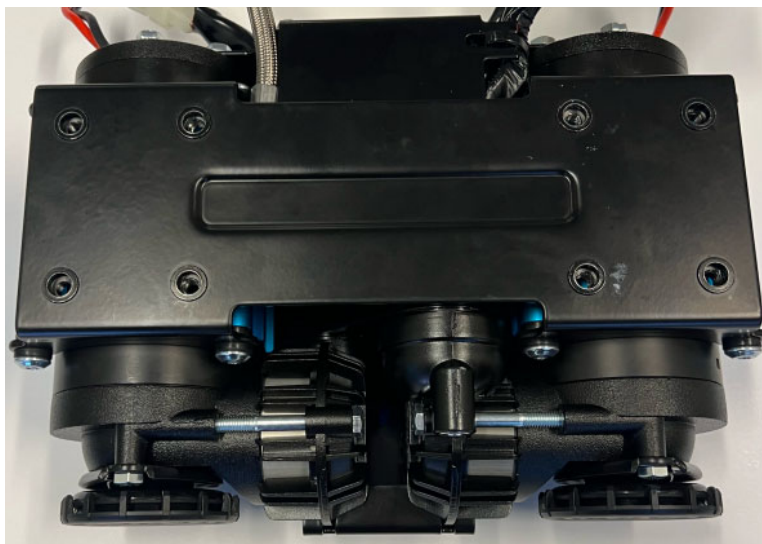


28. On top of the product there is a metal cover plate finished in the same gloss black used throughout the product. The plate has a smooth texture and includes branding that stands out due to its high contrast with the surrounding surfaces.

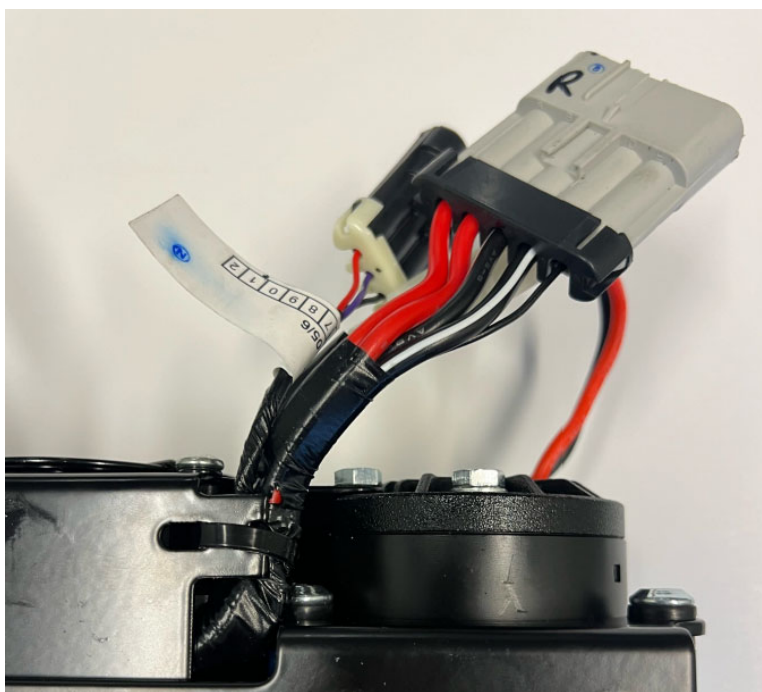


29. ARB chose a cover plate design that is a continuous piece of metal that covers approximately one third of the surface area of the top portion of the product and extends over and down the front and rear sections.

30. Like the top of the product, the bottom of the product continues with a focus on the details, including a smooth metal cover plate finished in gloss black. The plate is continuous, extending out towards and connecting directly to the heat sinks covering the motor cylinders. This thoughtful design holistically ties together the product's various parts, creating a sense of oneness. The plate is approximately the same width as the heat sinks.



31. The wiring harness extends out from the bottom of the product, utilizes black electrical tape (among a near endless assortment of possible colors), and is fastened to the cover plate using black zip ties to complete the clean aesthetic.



32. The above ornamental design features of ARB's compressors collectively comprise ARB's trade dress (the "ARB Trade Dress"), and play a critical role in identifying and

distinguishing ARB's products from the products of its competitors. The ARB Trade Dress is relied on by consumers worldwide to identify ARB's quality 4x4 air compressors.

33. ARB offers its compressor products for direct sale to consumers under the ARB Trade Dress through its website located at <https://arbusa.com/>. ARB also offers its products through hundreds of third party retail stores and online stores throughout the United States and in many other countries.

34. ARB has expended substantial time, money, and resources marketing, advertising, and promoting the air compressor products sold under the ARB Trade Dress. That advertising has regularly focused on the unique ornamental appearance of the compressor products. ARB has received numerous accolades and industry praise for these products.

35. As a result of ARB's significant expenditures and efforts, the ARB Trade Dress has come to signify the high quality of the ARB air compressor products, and acquired incalculable distinction, reputation, and goodwill belonging exclusively to ARB.

36. The air compressor industry is a highly competitive market. To stand out among the masses of products, ARB made specific ornamental design choices that signal to the marketplace the origin of its products. ARB's unusual and memorable design choices that relate to the colors, textures, layout, shapes, and sizes of its products' components creates a unique family of products with a design that emphasizes, and has become associated with, ARB's attention to detail, ruggedness, and quality. ARB understands its products will be used by off-roading enthusiasts. These enthusiasts care deeply about both the functionality of the product and its aesthetic nature. It must fit the overall look of their builds—sleek, aggressive, durable, and distinctively “aftermarket”:

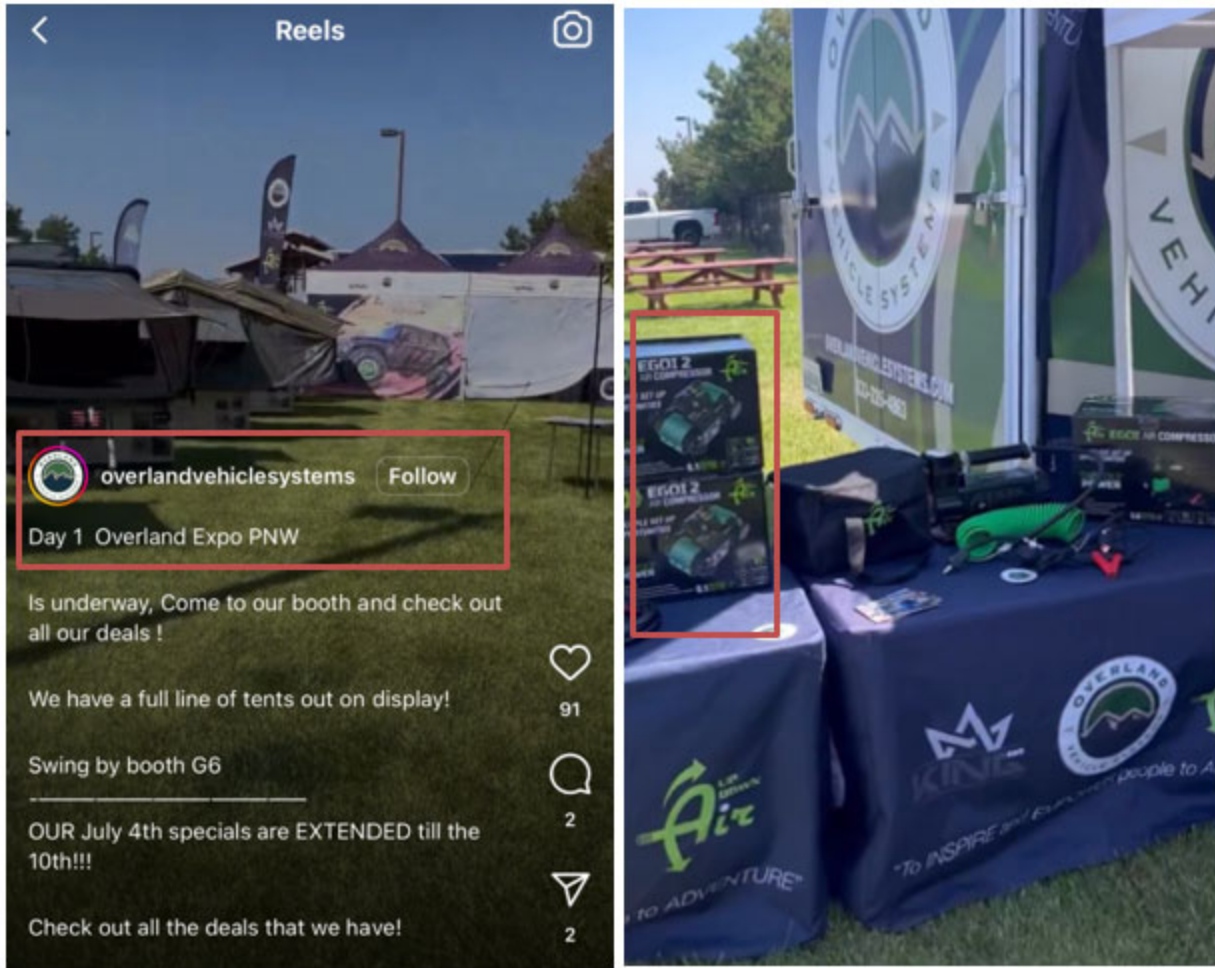


The ARB Trade Dress delivers on that need, and has taken on a secondary meaning in the minds of consumers, who have come to associate the ARB Trade Dress with ARB as the source of these high quality compressors.

B. Overland's Competing Twin Compressor

37. In about 2023, ARB became aware that Overland—a competitor in the 4x4 accessory space—had begun to offer for sale a twin motor air compressor that uses the ARB Trade Dress and is confusingly similar to the ARB Twin Motor Compressor (the “Infringing Compressor”).

38. For example, Overland recently set up a booth at the “Overland Expo PNW” in Redmond, Oregon, from July 7-9, 2023. At this expo, Overland marketed and promoted the Infringing Compressor to a large gathering of outdoor enthusiasts. A screenshot from Overland’s social media content capturing the booth and Overland’s display of the Infringing Compressor is reproduced below:



39. Overland is also selling and/or attempting to sell the Infringing Compressor through various Oregon retailers, including at least 4 Wheel Parts in Tigard, Oregon, and RalliTek in Portland, Oregon.

40. The Infringing Compressor is shown below, alongside the ARB Twin Motor Compressor:



41. The Infringing Compressor shares nearly all of the ornamental design features that make up the ARB Trade Dress.

42. Specifically, by way of example, the Infringing Compressor uses two motors with heat sinks with radial fins wrapped circumferentially around the motors and attached using two black bolts. Like the ARB Twin Motor Compressor, the heat sinks appear to be a brushed metal texture with a bright color that provides substantial contrast to the dominant color, which is black. The heat sinks' size and shape give the appearance of black collars on either side of the heat sinks.

43. Like the ARB Twin Motor Compressor, the Infringing Compressor also uses a mixture of smooth and textured glossy black metals and flat black plastics.



44. Additionally, the hardware deployed along the front and rear of the Infringing Compressor is stainless steel, is visible, and placed in the same approximate locations as the hardware on the ARB Twin Motor Compressor.

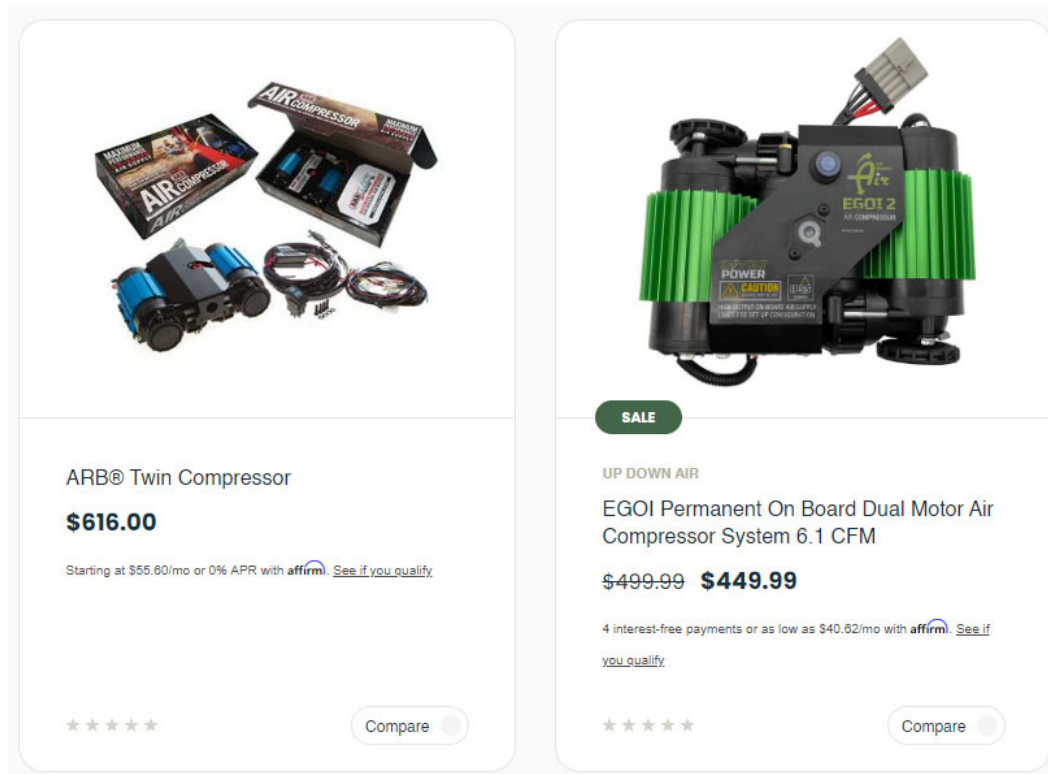
45. The Infringing Compressor's cover plate extends from the top of the product to its sides, and covers approximately the same amount of surface area as the cover plate on the ARB Twin Motor Compressor.

46. The Infringing Compressor also uses ARB's ornate designs for its metal grill, circular end caps, and rear heat sinks.



47. The similarities described above show that Overland intends the Infringing Compressor to be a confusingly similar imitation of the ARB Trade Dress utilized on ARB's

compressor products. The Infringing Compressor is similar to, and competes directly with, the compressor products sold by ARB. The competing products are sold through overlapping channels of trade. Indeed, Overland has both products listed on its website, side by side:



48. Overland's use of ARB's Trade Dress is likely to confuse and deceive consumers as to the origin, source, sponsorship, or affiliation of its Overland's Infringing Compressor, and is likely to cause consumers to believe, contrary to fact, that the Infringing Compressor is sold, authorized, endorsed, or sponsored by ARB.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Federal Trade Dress Infringement, Unfair Competition, and False Designation of Origin in Violation Of 15 U.S.C. § 1125(a)(1)(A))

49. ARB repeats and realleges the allegations above as if fully set forth herein.

50. The ARB Trade Dress consists of ornamental, distinctive design choices that identify and distinguish ARB's products from those of its competitors. The ARB Trade Dress has taken on a secondary meaning in the minds of consumers from ARB's persistent use of it within the marketplace.

51. Overland's use of the ARB Trade Dress on and in connection with its products, including but not limited to the Infringing Compressor depicted herein, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Overland or its products with ARB, or as to the origin, sponsorship, or approval of Overland's products by ARB, in violation of 15 U.S.C. § 1125(a).

52. To any ordinary observer, and to off-roading consumers and members of the industry, the "look" of the Infringing Compressor is confusingly similar to the ARB Twin Motor Compressor, in particular, the ornamental, distinctive appearance of the ARB Twin Motor Compressor, including each of the design features described *supra* at ¶¶ 14-32.

53. Overland's past, present and future use, distribution, sale and/or offer for sale of air compressor products using ornamental design features that are confusingly similar to the ARB Trade Dress, including but not limited to the Infringing Compressor, constitutes trade dress infringement, unfair competition, and false designation of origin under 15 U.S.C. § 1125(a).

54. Overland's conduct threatens to cause and is causing immediate and irreparable harm and injury to ARB, and to its goodwill and reputation, and is and will continue to both damage ARB and confuse the public unless enjoined by this Court. ARB has no adequate remedy at law.

55. ARB has no adequate remedy at law because its trade dress rights in the Infringing Compressor represents to the public the source, reputation, and goodwill of ARB's products. Certain damages caused by Overland's acts may not be susceptible to any ready or precise calculation of damages because such damages involve lost business opportunities and loss of goodwill. Accordingly, monetary damages alone cannot fully compensate ARB for Overland's misconduct. ARB is entitled to a preliminary and permanent injunction under 15 U.S.C. §1116 against Overland's continued use of the infringing trade dress. If Overland's activities are not enjoined, ARB will continue to suffer irreparable harm and injury to its goodwill and reputation.

56. On information and belief, Overland has been aware of ARB's products and the ARB Trade Dress based on its close copying of the ARB Twin Motor Compressor. As such, Overland's infringing activities have been and continue to be willful and deliberate. As a direct and proximate result of Overland's willful trade dress infringement, unfair competition, and false designation of origin, and pursuant to 15 U.S.C. § 1117(a), ARB is entitled to recover damages from Overland in an amount to be determined at trial, including Overland's profits and three times the amount of actual damages sustained by ARB, together with costs and reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

(State Common Law Unfair Competition)

57. ARB repeats and realleges the allegations above as if fully set forth herein.

58. Overland's acts constitute unfair competition and have created and will continue to create, unless restrained by this Court, a likelihood of confusion to the irreparable injury of ARB.

59. On information and belief, Overland acted with full knowledge of ARB's use of, and statutory and common law rights to, the ARB Trade Dress and in disregard of the likelihood of confusion of the public created by Overland's activities.

60. Overland's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the ARB Trade Dress to the irreparable injury of ARB.

61. As a direct and proximate result of Overland's unfair competition, ARB has been, and continues to be, irreparably harmed in its business, including its reputation and business identity, resulting in lost revenues and profits, and diminished goodwill and reputation.

62. ARB has no adequate remedy at law because its trade dress represents to the public the source, reputation, and goodwill of and associated with ARB's products. Certain damages caused by Overland's acts may not be susceptible to any ready or precise calculation of damages because such damages involve lost business opportunities and loss of goodwill. Accordingly, monetary damages alone cannot fully compensate ARB for Overland's misconduct. If Overland's activities are not enjoined, ARB will continue to suffer irreparable harm and injury to its goodwill and reputation.

63. As a direct and proximate result of Overland's unfair competition, ARB is also entitled to recover its actual damages and the profits wrongfully obtained by Defendant attributable to its conduct in an amount to be proven at trial, together with costs and reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF

(Unlawful Trade Practice in violation of O.R.S. § 646.608(1)(b) and (c))

64. ARB repeats and realleges the allegations above as if fully set forth herein.

65. Overland's acts constitute unfair trade practice in the course of its business and have created and will continue to create, unless restrained by this Court, a likelihood of confusion as to the source, sponsorship, approval, certification, affiliation, connection, or association between ARB and Overland, to the irreparable injury of ARB.

66. On information and belief, Overland acted with full knowledge of ARB's use of, and statutory and common law rights to, the ARB Trade Dress and without regard to the likelihood of confusion of the public created by Overland's activities.

67. Overland's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the ARB Trade Dress to the irreparable injury of ARB.

68. As a direct and proximate result of Overland's unfair trade practice, ARB has been, and continues to be, irreparably harmed in its business, including its reputation and business identity, resulting in lost revenues and profits, and diminished goodwill and reputation.

69. ARB has no adequate remedy at law because its trade dress represents to the public the source, reputation, and goodwill of and associated with ARB's products. Certain damages caused by Overland's acts may not be susceptible to any ready or precise calculation of damages because such damages involve lost business opportunities and loss of goodwill. Accordingly, monetary damages alone cannot fully compensate ARB for Overland's misconduct. If Overland's activities are not enjoined, ARB will continue to suffer irreparable harm and injury to its goodwill and reputation.

70. As a direct and proximate result of Overland's unfair trade practice, ARB is also entitled to recover its actual damages and the profits wrongfully obtained by Defendant attributable to its conduct in an amount to be proven at trial, together with costs and reasonable attorneys' fees.

VI. PRAYER FOR RELIEF

Plaintiff ARB Corporation Limited respectfully requests that this Court grant the following relief against Defendant Overland Vehicle Systems LLC:

A. That ARB be awarded all damages it has sustained by reason of Overland's wrongful acts, and that such damages be trebled to the extent allowed by law, pursuant to *inter alia* 15 U.S.C. § 1117, together with prejudgment interest;

B. That Overland be ordered to cease offering for sale, marketing, promoting, and selling, to remove from its retail stores, and to recall all products sold under or bearing a confusingly similar imitation of ARB's Trade Dress, including but not limited to the Infringing

Compressor, which are in Overland's possession or have been shipped by Overland or under its authority, to any customer, including but not limited to, any wholesaler, distributor, retailer, consignor, or marketer, and also to deliver to each customer a copy of this Court's order as it relates to said injunctive relief against Overland;

C. That an accounting and disgorgement be ordered and that ARB be awarded all gains, profits, and advantages derived by Overland from its wrongful acts, and that the amount of any accounting be trebled to the extent allowed by law;

D. That Overland be ordered to pay and ARB be awarded exemplary and punitive damages;

E. That Overland be required to pay ARB all of ARB's litigation expenses, including reasonable attorneys' fees and costs, pursuant to *inter alia* 15 U.S.C. § 1117 and O.R.S. § 646.638;

F. That the Court grant ARB any such other relief it deems just and proper.

II. JURY DEMAND

ARB demands a jury on all claims and issues so triable pursuant to Federal Rule of Civil Procedure 38(b) and Local Civil Rule 38.

Dated this 15th day of February, 2024.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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